

AMENDED IN ASSEMBLY APRIL 28, 2005

AMENDED IN ASSEMBLY APRIL 11, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 1098

Introduced by Assembly Member Jones

February 22, 2005

An act to amend Section 1365.2 of, and to add Section 1363.07 to, of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1098, as amended, Jones. Common interest developments.

The Davis-Stirling Common Interest Development Act creates and regulates common interest developments, requires them to have a recorded declaration containing specified information, and permits them to levy assessments. The act establishes, in certain situations, voting requirements for amendment of the declaration and the levy of assessments, and requires that a common interest development be managed by an association. Existing law regulates a broad range of activities associated with statewide, local, and special elections.

This bill would require any association election regarding certain subjects, including, among other things, the amendment of any governing documents of the association and the membership of the governing board of the association, to comply with specified procedures relating to election rules, voting, proxy ballots, and election audits. The bill would authorize a member of the association to initiate a civil action to enforce his or her rights under these provisions, and would require a court to void the results of the election upon a finding that the election procedures were not followed. The bill would provide reasonable attorney's fees and court costs to any

member of the association who ~~initiates the~~ *prevails in a* civil action, and would impose a civil penalty of up to \$1,000 per violation.

The act also requires the association to make the accounting books and records and the minutes of proceedings of the association available for inspection and copying by a member of the association, or the member's designated representative, as specified.

This bill would require the association, including an association still under the control of a developer, to make all association records, as defined, available for inspection and copying by a member of the association, or the member's designated representative. The bill would require the association to make the records available within 3 days of receipt of the request, and would provide that these provisions apply to any community service organization or similar entity that is related to the association. The bill would make other conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1363.07 is added to the Civil Code, to
- 2 read:
- 3 1363.07. (a) Notwithstanding any other law or provision of
- 4 the governing documents, an election regarding any of the
- 5 following subjects shall comply with the procedures set forth in
- 6 this section:
- 7 (1) The amendment of any governing document.
- 8 (2) The membership of the governing board of the association,
- 9 including special elections to fill board vacancies.
- 10 (3) The setting of a special assessment.
- 11 (4) The setting of a regular assessment in excess of the limit
- 12 provided in subdivision (b) of Section 1366.
- 13 (5) The transfer of reserve account moneys dedicated to capital
- 14 improvements into operating accounts dedicated to general
- 15 operations.
- 16 (6) The annexation of property to, or the sale of the common
- 17 area property of, the development.
- 18 (b) (1) Election rules, including nomination procedures, but
- 19 excluding the provisions of this section, shall be developed
- 20 jointly by the board and homeowners under the association
- 21 rulemaking procedures of Article 4 (commencing with Section

1 1357.100) of Chapter 2. The rules shall ensure equal access, at no
2 cost, to all association media, newsletters, and Web sites by
3 candidates who are not board incumbents and by advocates for
4 points of view not endorsed by the board during a campaign. If
5 the association has common area meeting space, the rules shall
6 ensure meeting space, at no cost, to candidates who are not
7 incumbents and to advocates for points of view not endorsed by
8 the board during a campaign.

9 (2) Qualifications for voting shall be stated on the ballot.

10 (3) Ballots shall be mailed by first-class mail or delivered to
11 every homeowner no less than 45 days prior to the deadline for
12 voting. Ballots shall be delivered to every homeowner whether or
13 not a dispute is pending between the homeowner and association.

14 (c) (1) In order to preserve confidentiality, a voter may not be
15 identified by name, address, or lot number on the ballot. The
16 association shall use as a model those procedures used by
17 California counties for ensuring confidentiality of voter absentee
18 ballots, including all of the following:

19 (A) The ballot itself is not signed by the voter, but is inserted
20 into an envelope that is sealed.

21 (B) The first envelope is inserted into a second envelope that
22 is sealed.

23 (C) In the upper left hand corner of the second envelope, the
24 voter prints and signs his *or her* name, address, and lot or parcel
25 number entitling him or her to vote.

26 (2) The second envelope is addressed to the neutral third party,
27 who will be tallying the votes. The envelope may be mailed or
28 delivered by hand. The homeowner may request a receipt for
29 delivery.

30 (3) For the purposes of this section, a volunteer pollworker
31 with the county registrar of voters, a licensee of the California
32 Board of Accountancy, or a notary public, not currently
33 employed by or under contract to the association for any other
34 compensable services, will be deemed an independent third
35 party.

36 (4) At all times during a campaign, the sealed ballots shall be
37 in the custody of the neutral third party with no direct or indirect
38 financial relationship to the association board. At no time shall
39 the governing board, its law firm, or property manager have
40 custody of the ballots.

(5) The neutral third party with custody of the ballots shall verify the signatures, tabulate the votes, and certify the election at an open meeting of the association and its board that has been properly noticed to members. The meeting may be an annual, special, or regular meeting of the association and its board. The custodian of the ballots shall deliver the results to the board, which shall include them in the minutes of that meeting.

(6) The board shall notify all members of the association in writing of the voting results within 15 days of the date of the meeting at which the results of the vote were revealed.

(7) An affirmative vote of homeowners having not less than $\frac{2}{3}$ of the votes in the association is required to pass any measure regarding the annexation or sale of property. This affirmative vote requirement shall be calculated in relation to all votes eligible to be cast in a given election.

(8) Cumulative voting shall be applied to an election for the governing board of the association. "Cumulative voting" for the purposes of this section means a method of voting that gives a voter the same number of votes as there are seats to be filled on the governing board times the number of parcels owned by the member. Cumulative voting permits the voter to apply his or her votes for one candidate or for a selected group of candidates.

(d) Any instructions for casting a proxy ballot in an election shall be set forth on a separate page that the member can detach from the ballot and retain for his or her records for one year after the date of the election. The proxy holder shall vote by secret ballot according to the member's instructions.

(e) (1) Election ballots and the signed envelopes shall be stored by the neutral third party in a secure place for no less than one year after the date of the meeting at which the ballots were tallied. In the event of a recount or other challenge to the election process, the association shall, upon written request, make the ballots available for public inspection.

(2) Confidentiality of ballots, including proxy ballots, shall be maintained during a recount.

(f) A member of the association may initiate a civil action to enforce his or her rights under this section. Upon a finding that the election procedures of this section, including the adoption of rules under Article 4 (commencing with Section 1357.100) of Chapter 2, were not followed, a court shall void the results of the

1 election. Any member who ~~initiates~~ *prevails in* a civil action
2 shall be entitled to reasonable attorney's fees and court costs, and
3 the court may impose a civil penalty of up to one thousand
4 dollars (\$1,000) for each violation.

5 SEC. 2. Section 1365.2 of the Civil Code is amended to read:

6 1365.2. (a) (1) The association, including an association still
7 under the control of a developer, shall make all association
8 records available for inspection and copying by a member of the
9 association, or the member's designated representative, as
10 provided by this section. The association shall make the records
11 available within three days of receipt of the request. The
12 provisions of this section apply to any community service
13 organization or similar entity, as defined in paragraph (3) of
14 subdivision (c) of Section 1368, that is related to the association,
15 and this section shall operate to give a member of the community
16 service organization or similar entity a right to inspect and copy
17 the records of that organization or entity equivalent to that
18 granted to association members by this section.

19 (2) A member of the association may designate another person
20 to inspect and copy the accounting books and records and the
21 minutes of proceedings on the member's behalf. The member
22 shall make this designation in writing.

23 (b) (1) The association shall make the association records
24 available for inspection and copying in the association's business
25 office within the common interest development.

26 (2) If the association does not have a business office within the
27 development, the association shall make the association records
28 available for inspection and copying at a place that the requesting
29 member and the association agree upon.

30 (3) If the association and the requesting member cannot agree
31 upon a place for inspection and copying pursuant to paragraph
32 (2), or if the requesting member submits a written request
33 directly to the association for copies, the association may satisfy
34 the requirement to make the association records available for
35 inspection and copying by mailing copies of the requested
36 records to the member by first-class mail within 10 days of
37 receiving the member's request. The association may bill the
38 requesting member for its actual, reasonable costs for copying
39 and mailing requested documents. The association shall inform

1 the member of the amount of the copying and mailing costs
2 before sending the requested documents.

3 (c) (1) Except as provided in paragraph (2), the association
4 may withhold or redact information from the association records
5 for any of the following reasons:

6 (A) The release of the information is reasonably likely to lead
7 to identity theft. For the purposes of this section, “identity theft”
8 means the unauthorized use of another person’s personal
9 identifying information to obtain credit, goods, services, money,
10 or property.

11 (B) The release of the information is reasonably likely to lead
12 to fraud in connection with the association.

13 (C) The information is privileged under law.

14 (2) Except as provided by the attorney-client privilege, the
15 association may not withhold or redact information concerning
16 the compensation paid to employees, vendors, or contractors.
17 Compensation information for individual employees shall be set
18 forth by job classification or title, not by the employee’s name,
19 social security number, or other personal information.

20 (d) (1) The association records, and any information from
21 them, may not be sold, used for a commercial purpose, or used
22 for any other purpose not reasonably related to a member’s
23 interest as a member. An association may bring an action against
24 any person who violates this section for injunctive relief and for
25 actual damages to the association caused by the violation.

26 (2) This section may not be construed to limit the right of an
27 association to damages for misuse of information obtained from
28 the association records pursuant to this section or to limit the
29 right of an association to injunctive relief to stop the misuse of
30 this information.

31 (3) An association shall be entitled to recover reasonable costs
32 and expenses, including reasonable attorney’s fees, in a
33 successful action to enforce its rights under this section.

34 (e) A member of an association may bring an action to enforce
35 the member’s right to inspect and copy the association records. If
36 a court finds that the association unreasonably withheld access to
37 the association records, the court shall award the member
38 reasonable costs and expenses, including reasonable attorney’s
39 fees, and may assess a civil penalty of up to one thousand dollars
40 (\$1,000) for each violation.

1 (f) For the purposes of this section, “association records”
2 includes all of the following:

3 (1) Accounting books and records.

4 (2) Agendas and minutes of meetings or other proceedings.

5 (3) Signed contracts to which the association is or has been a
6 party or where association assessments provide payment for
7 services.

8 (4) Invoices, receipts, check registers, canceled checks,
9 purchase orders, accounting statements, and bank statements.

10 (5) Any document that can be used to verify any financial
11 report issued by the association, its committees, its auditor, or its
12 developer.

13 (6) Common area maintenance records.

14 (7) Membership lists.

15 (8) Any item listed in paragraphs (1) to (7), inclusive, held by,
16 in the possession of, in the name of, or otherwise connected with
17 any committee of the association or community service
18 organization or similar entity.